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No. 624

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

EARLE C. MOODY, ET AL., *Appellants,*

v.

RICHMOND M. FLOWERS, ET AL., *Appellees.*

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA

JURISDICTIONAL STATEMENT

CHARLES S. RHYNE,
BRICE W. RHYNE,
EDWARD D. COXEN,
Rhyne & Rhyne,
839 17th Street, N.W.,
Washington, D. C. 20006.

C. R. LEWIS,
P. O. Box 1165,
Dothan, Alabama,
Attorneys for Appellants.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No.

EARLE C. MOODY, ET AL., *Appellants,*

v.

RICHMOND M. FLOWERS, ET AL., *Appellees.*

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA

JURISDICTIONAL STATEMENT

This is an appeal by Earle C. Moody, *et al.*, from a judgment entered on June 14, 1966, in accordance with an Opinion of the District Court of the United States for the Middle District of Alabama, as a three-judge statutory Court specially invoked by virtue of the provisions of 28 U. S. C. §2281. This Statement is submitted by Appellants to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial Federal question is presented.

Opinions Below

The Majority Opinion of the District Court of the United States for the Middle District of Alabama denying Appellants relief is reported at 256 F. Supp. 195 (M.D. Ala., 1966), 34 U. S. L. Week 2706 (June 28, 1966), and is attached to this Jurisdictional Statement, as Appendix A, *infra*, at page 14. The dissenting Opinion of District Judge Johnson is attached to this Statement as Appendix B, *infra*, at page 23.

Jurisdiction

This suit was instituted by Appellants under 42 U. S. C. §1983 and 1988 (17 Stat. 13 and 16 Stat. 144, as amended); and 28 U. S. C. §1343(3) (62 Stat. 932); and 28 U. S. C. §2281, et seq., (62 Stat. 968); and 28 U. S. C. §2201 (62 Stat. 964, as amended) seeking a declaratory judgment, injunctive and other appropriate relief restraining the enforcement, operation and execution of Act No. 9 of the 1957 Regular Session of the Legislature of Alabama (Acts of Alabama, Reg. Sess. 1957, No. 9, page 30 *et seq.*, effective May 24, 1957). Under the provisions of the above cited Alabama statute (hereinafter sometimes referred to as "Act No. 9"), Appellants are denied full and equal voting rights in the election of members of the county governing body of Houston County, Alabama, (Board of Revenue and Control, hereinafter sometimes referred to as "Board").

Notice of Appeal was filed on August 5, 1966. The jurisdiction of the Court to review this decision by direct appeal is conferred by 28 U. S. C. §1253. The following decisions sustain the jurisdiction of this Court to review the judgment on appeal in this case. *Baker* v. *Carr*, 369 U. S. 186; *Reynolds* v. *Sims*, 377 U. S. 533; *WMCA* v. *Lomenzo*, 377 U. S. 633; *Davis* v. *Mann*, 377 U. S. 678; *Roman* v. *Sincock*, 377 U. S. 695; *Lucas* v. *Colorado General Assembly*, 377 U. S. 713.

Primary Statutes Involved and Constitutional Provisions

Act No. 9 of the 1957 Regular Session of the Legislature of Alabama, which is set forth in Appendix C, *infra*, at page 30. 42 U. S. C. §§ 1983 and 1988 and 28 U. S. C. §1343(3), which are set forth in Appendix D, *infra*, at page 37. The United States Constitution, Amendment XIV, Section 1, which is set forth in Appendix E, *infra*, at page 39. Article I, Sections 2 and 33 and Article VIII, Section 177, of the Alabama Constitution of 1901, which are set forth in Appendix F, *infra*, at page 40.

Question Presented

Whether the Fourteenth Amendment's equal protection clause prohibits the Alabama Legislature from creating a county governing board and providing for the election of members thereto in a manner whereby approximately 61 per cent of the county's population is accorded only 20 per cent representation (1 member) on the 5-member governing board.

Statement of the Case

Appellants, as citizens, taxpayers and voters of the United States and the State of Alabama, Houston County, City of Dothan, brought this action, individually and in their official capacities and on behalf of others similarly situated, against the Appellees to invalidate and to enjoin the enforcement and operation of an Alabama statute (Appendix C, *infra*, at page 30), which statute created and permanently districted and apportioned the Houston County governing Board in flagrant disregard of the County's population and number of qualified voters.

Appellants further specifically requested that the District Court order at-large primary and general elections of the members of said Board until such time as the Alabama

Legislature shall redistrict and reapportion the Board on a population basis.

The District Court by a 2-1 vote denied Appellants any of the relief sought and dismissed the action.

The facts involved in this Appeal are relatively simple. Under Act No. 9 Houston County is permanently divided into 14 election precincts or "beats". These beats in turn comprise 5 Districts. Each District sends one member to the County governing Board and each member may cast one vote on all matters before the Board.[1] The number of qualified electors in each of the 5 Districts as of 1960 is as follows:

District No. 1 (comprising beats 1, 2 and 4)	1,224
District No. 2 (comprising beats 5, 6, 7, and 11)	1,722
District No. 3 (comprising beats 10, 12, and 14)	1,450
District No. 4 (comprising beats 8, 9, and 13)	1,368
District No. 5 (comprising beat 3, City of Dothan)	9,046

A map of Houston County showing the division thereof into beats is attached to the Complaint as Exhibit 2.

According to the 1960 official United States census figures, the total population of Houston County was 50,718 and the total population of the City of Dothan (District No. 5 and beat 3) was 31,440, said population of Dothan comprising approximately 61% of the total population of Houston County. Although exact figures are unavailable, the population of each of the 5 Districts does not differ proportionally from the number of registered qualified voters within each District. (Opinion of the Majority, page 2, Appendix A, page 15, *infra.*)

[1] The Judge of Probate of Houston County, Alabama, serves as *ex officio* chairman of the Board but lacks the power to vote upon any matter before the Board unless there is a tie vote among the Board members present and voting.

It is also undisputed that the total assessed value of property in Houston County for *ad valorem* taxes in 1965 amounted to $30,621,030.00, of which amount property within the City of Dothan accounted for $21,217,120.00 or about 69% of the total assessed value of property in Houston County.

The above figures establish the following:

(1) The City of Dothan represents about 61 percent of the total population of Houston County, but is accorded only 20% representation (1 member) on the 5-member County governing Board.

(2) Approximately 27 percent of the County's rural qualified voters can elect a majority of members to the Board and thereby exercise perpetual veto power over the will of the majority of the County's urban voters.

(3) The number of qualified voters represented by the Board member in District No. 5, the City of Dothan, exceeds the number of qualified voters in an ideal or "average"[2] County District by over 305 percent.

(4) A District consisting of the average number of voters in District 1 through 4 would contain 1,441 voters. A comparison of this figure with the number of voters in the City of Dothan (District No. 5), which is 9,046 voters, shows that the number of voters in Dothan exceed by about 527 per cent the number of voters in Districts 1 through 4 as averaged out.

(5) A rural voter who lives in District No. 1 has nearly 7½ times the voting power as his urban counter-

[2] An ideal or average County District is arrived at by dividing the total number of qualified voters in Houston County (14,810) by 5, the number of County Districts.

part who happens to live in District No. 5, the City of Dothan.

As evidenced by the above facts and figures, the apportionment of population among the 5 districts in Houston County results unquestionably in a significant undervaluation of the weight of the vote of each voter residing in the City of Dothan. The apportionment scheme follows no rational policy and constitutes invidious discrimination against the urban residents and voters of Houston County. *Bailey* v. *Jones*, 139 N.W. 2d 385, 389 (S. Dak. 1966).

The Federal Question Raised on This Appeal Is Substantial

The question of whether voter equality has any constitutional meaning on the county and municipal level of government requires an unequivocal answer in the affirmative by this Court. The right to vote freely for the candidate of one's choice and to have his vote accorded equal weight is the essence of a democratic system, and any restriction on that right strikes at the heart of the Fourteenth Amendment. *Reynolds* v. *Sims*, 377 U.S. 533, 555.

While no case is exactly like this one, there is a conflict among federal and state courts as to the application of the "one-man, one-vote" principle in sub-state governmental elections. The overwhelming majority of the lower courts has disagreed with the rationale and decision of the Majority Opinion in this case, subscribing rather to the dissenting opinion of Judge Johnson.[3] They have held

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[3] *Ellis* v. *Mayor and City Council of Baltimore*, 234 F. Supp. (D. Md. 1964), *aff'd*, 352 F. 2d 123 (4th Cir. 1965) (City Council); *Davis* v. *Dusch*, 361 F. 2d 495 (4th Cir. 1966) (City Council); *Damon* v. *Lauderdale County Election Comm'rs*, Civil No. 1197-E (S.D. Miss. Oct. 21, 1964) (informal opinion) reprinted in 13 National Municipal League, Court Decision on Legislative Reapportionment 139 (1965) (County Board of Supervisors); *Mauk* v. *Hoffman*, 87 N.J. Super. 276, 209 A. 2d 150 (Ch. Div. 1965)

that apportionment substantially based on population is required in elective local governmental bodies, such as the governing Board of Houston County, Alabama.

The lower courts refusing to apply the principle of voter equality to elective governmental units of the states have refrained from acting primarily because of the absence of a clear mandate from this Court. This is well illustrated by the following quotes from judicial decisions:

(1) "We recognize that the Supreme Court of the United States may at some time in the future reach the conclusion that the District Courts of the United States have the power and duty to prescribe guide lines for the selection of the many boards and commissions created and organized in connection with local government. We are satisfied that the Supreme Court of the United States has not yet reached that point. We are satisfied that we should not anticipate that the Supreme Court will reach that point." *Sailors* v. *The Board of Education of the County of Kent*, Civil No. 4480, page 2 (W.D. Mich., May 2, 1966), *appeal docketed* 35 U. S. L. Week 3072 (Aug. 10, 1966) (No. 430) (Involving local school boards).

(2) "The Legislature of Alabama, which alone has the power to redistrict these counties, has never

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(County Board of Freeholders); *State ex rel. Sonneborn* v. *Sylvester*, 26 Wis. 2d 43, 132 N.W. 2d 249 (1965) (County Board of Supervisors); *Seaman* v. *Fedourich*, 16 N.Y. 2d 94, 209 N.E. 2d 778 (1965) (City Council); *Bailey* v. *Jones*, 139 N.W. 2d 385 (S. Dak. 1966) (County Commissioners); *Bianchi* v. *Griffing*, 217 F. Supp. 166, 238 F. Supp. 997 (E.D. N.Y. 1965), *appeal dismissed*, 382 U.S. 15 (County Board of Supervisors); *Delorier* v. *Tyrone Area School Board*, 247 F. Supp. 30 (W.D. Pa. 1965) (School Board); *Montgomery County Council* v. *Garratt*, No. 227 (Md. Ct. App. Aug. 4, 1966) (County Council); *Hanlon* v. *Towey*, Nos. 40084, 40203 (Minn. 1966), 142 N.W. 2d 741 (1966) (County Board of Commissioners).

been advised by any definitive mandate that it has a duty to do so.

"It is not for us to forecast the likelihood that the Supreme Court will ultimately extend the principles of *Reynolds* v. *Sims, supra,* to . . . subordinate political units of the states. . . ." *Moody* v. *Flowers,* 256 F. Supp. 195 (M.D. Ala. 1966), 34 U. S. L. Week 2706 (June 28, 1966), Notice of Appeal to the Supreme Court of the United States filed August 5, 1966 (Appendix A, *infra,* page 14).

(3) "Neither the Fourteenth Amendment, nor Article 4 of the Constitution of the United States, has so far been interpreted by the Supreme Court of the United States to require the apportionment of local legislative bodies in a state in accordance with population." *Johnson* v. *Genesee County,* 232 F. Supp. 567, 570, (E.D. Mich. 1964) (Involving county board of supervisors).

That the Supreme Court of the United States must act —and act now—to "clear the air" in this area of voter inequality on the local level of government is perhaps best demonstrated by the confusing situation which exists in the State of Michigan. There the Michigan Supreme Court has recently affirmed (by a tie vote) two decisions relating to county apportionment which reached exactly the opposite result! *Brouwer* v. *Bronkema,* 377 Mich. 616, 141 N.W. 2d 98 (1966); *Knudsen* v. *Klevering,* 377 Mich. 666, 141 N.W. 2d 120, 123 (1966). The deadlock in the Michigan Supreme Court would never had occurred had the Michigan Court been certain of this Court's position with respect to local governmental apportionment. As stated by Justice Black in the *Knudsen* Case:

"To employ an apt expression of Justice Adams our immediate question is whether this Court of a State is going 'to attempt to out run the Supreme Court of the United States . . . .' Now if this Supreme Court [Michigan Supreme Court] did have the final word for the present case, which of course it does not, I would join those who say that the 'one-man one vote' principle applies to and controls the organization of county government in Michigan. Having reread Judge Searl's opinion of the companion case (considered post), I lean indeed to the belief that the United States Supreme Court will—in the ultimate—apply Fourteenth Amendment equality per the cited cases to the elective organization of local government."

* * * * * * *

"Seated as we are as a subordinate court confronted by an undecided Federal question of nationally controlling eminence, I would pause upon that ground until a specifically corresponding issue comes to reliable disposition in the Federal system proper. . . ." (141 N.W. 2d 121-122)

The issue in this Appeal is not concerned with whether the voters of Dothan, Alabama, have a constitutional right to an elective system of county government. Rather the question is where the Alabama Legislature has prescribed by statute that members of the Houston County Board are to be elected—not appointed—whether the election of such members must be based on the principle of voter equality. Thus, it has been stated that:

"The state can, of course, constitutionally refuse to set up an elective process for the selection of municipal officials; it can appoint them all. But, if it chooses

an elective method, the Fourteenth Amendment imposes certain limits on its use of that method." Note, *Reapportionment*, 79 Harv. L. Rev. 1226, 1271 (1966);

and

"[T]he prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action . . . or whatever the guise in which it is taken. . . ." *Cooper* v. *Aaron*, 358 U. S. 1, 17.

Once granted, the right to vote means a right to an equal vote and it becomes a fundamental, personal right indigenous to self-government and preservative of all other civil and political rights.

As this Court knows, *Baker* v. *Carr*, 369 U. S. 186, and the other state apportionment cases triggered litigation, constitutional revision, and legislation in every state. The major issue now raised is whether the democratic principles enunciated in those state apportionment cases apply to an elective county governing board. The final answer to this question can be settled only by this Court.

The Alabama Legislature has had nearly ten years to reapportion the Houston County governing Board on a population basis. Clearly, the Alabama Legislature is aware of this Court's state apportionment decisions. Indeed, the Alabama Legislature is itself apportioned on a population basis, as required by judicial mandate. *Sims* v. *Frink*, 208 F. Supp. 431 (M.D. Ala. 1962); *Sims* v. *Baggett*, 247 F. Supp. 96 (M.D. Ala. 1965). Yet the Legislature has deliberately refused to acknowledge the factor of population in districting and apportioning the Houston County governing Board. The voters of Houston County do not have the power of initiative or referendum with respect to the redistricting or reapportioning the governing Board. Even the Board

lacks the power to redistrict and reapportion itself. Such action must come from the Alabama Legislature or not at all. Exhibits 3 and 4 to the Complaint are copies of letters written by the Mayor of the City of Dothan, Alabama, to senators representing Houston County in the Alabama Legislature. These letters request the senators to introduce legislation in the Alabama Legislature correcting the gross malapportionment of the Houston County governing Board. No such remedial legislation was forthcoming, although one regular session and three special sessions of the Legislature were held after said letters were written and delivered.

The Majority Opinion (Appendix A, *infra*, page 14) suggests that Appellants have a non-judicial remedy available to correct the grossly malapportioned County governing Board. This "remedy" consists of an unarticulated "prevailing rule of local courtesy". Suffice it to say that a right as personal and fundamental as the right to vote—the right to cast an equal-weighted vote—cannot be left to hinge upon the precarious outcome of a so-called "rule of local courtesy" which has never been applied by the Alabama Legislature in the area of county reapportionment. Moreover, this Court has categorically held that even a majority of the people cannot vitiate one's constitutional right to cast an equal vote in state elections. *Lucas* v. *Colorado General Assembly*, 377 U.S. 713.

The truth of the matter is that Appellants are at the end of the road. Either this Court grants relief or the rural minority of Houston County will forever possess a ruling power, as well as a veto power, over the will of the majority of Houston County urban voters.

The equal protection clause of the Constitution of the United States, as well as the laws and Constitution of the State of Alabama (Appendix F, *infra*, page 40), guarantee

to Appellants free and equal suffrage in free and equal elections. By express legislative design, Houston County has a representative form of government in which ultimate control is vested in the voters of the County and the powers[4] delegated are exercised by an elected board of representatives. So long as governmental elections are statutorily required, as in this case, it is of no constitutional significance that a county board, as opposed to a state legislature, is involved. The same requirement of voter equality which applies to the election of state legislators should likewise apply to the election of county elective officers.

There is no case presently before this Court involving equal voting rights as applied to a county elective government.[5] The question here presented is new, substantial and important to our Nation's future, for voter equality at the local level is really the foundation of our democracy. Indeed, often one's only meaningful contact with government is at the county or local level. Of necessity, therefore, elective local officials must be responsible and responsive to the needs of the electorate. This responsibility and responsiveness will forever be wanting if the Majority Opinion is left to stand.

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[4] The Houston County governing Board possesses the power of taxation; jurisdiction with regard to the establishment, change or discontinuance of roads, bridges, causeways, ferries, and stock districts within the County; power to appropriate County funds for various public and governmental purposes; power to direct and control the property of the County as it may deem expedient according to law, and the power to dispose of any real property which can be lawfully disposed of, as well as other powers of lesser importance. Code of Ala., Tit. 12, §§ 11, 12, 16-19, 21-22, 177, 181, 185, 186, 191; Tit. 29, § 31 and Tit. 51, § 71 (1940) (Recomp. 1958); Act No. 193, Local Acts of Alabama, Extra Session of 1936, pp. 97-98. As the above powers illustrate, there is much at stake in the control of the County Board. Hence, this control must reflect majority rule.

[5] There is an appeal pending before this Court relating to the apportionment of local school boards, *Sailors* v. *The Board of Education of the County of Kent*, Civil No. 4480 (W.D. Mich., May 2, 1966), *appeal docketed*, 35 U.S. L. Week 3072 (Aug. 10, 1966) (No. 430).

Conclusion

It is submitted that the Court has jurisdiction, and it should hear this Appeal and reverse the judgment denying Appellants the equal voting rights which they are guaranteed by the Fourteenth Amendment.

Respectfully submitted,

CHARLES S. RHYNE,
BRICE W. RHYNE,
EDWARD D. COXEN,
Rhyne & Rhyne,
839 17th Street, N.W.,
Washington, D. C. 20006.

C. R. LEWIS,
P. O. Box 1165,
Dothan, Alabama,
Attorneys for Appellants.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

CIVIL ACTION No. 860
(Southern Division)

EARL C. MOODY, ET AL, *Plaintiffs,*

vs.

RICHMOND M. FLOWERS, ET AL, *Defendants.*

CIVIL ACTION No. 693
(Eastern Division)

JOHN B. STEVENSON, ET AL, *Plaintiffs,*

vs.

RICHMOND M. FLOWERS, ET AL, *Defendants.*

Before GEWIN, Circuit Judge, and LYNNE and JOHNSON, District Judges.

LYNNE, District Judge.

Consolidated for purpose of trial, these actions involve common questions of law and fact. Positing jurisdiction upon the provisions of 42 U.S.C.A. §§ 1983 and 1988 and 28 U.S.C.A. § 1343(3) each complaint seeks judicial intervention in the internal political affairs of a county.

No. 860-S (Houston County, Alabama)

The relevant facts may be severely capsulated. Houston County is divided into fourteen election precincts, commonly referred to as "Beats." Its Board of Revenue and Control

(Board) consists of five members, each elected by the qualified electors of the district of which he is a resident. In tabular form the five districts are described as follows:

District No. 1, comprising Beats 1, 2 and 4, contains 1,224 electors;

District No. 2, comprising Beats 5, 6, 7 and 11, contains 1,722 electors;

District No. 3, comprising Beats, 10, 12 and 14, contains 1,450 electors;

District No. 4, comprising Beats 8, 9 and 13, contains 1,368 electors;

District No. 5, comprising Beat 3 (the City of Dothan), contains 9,046 electors.

According to the 1960 census the total population of Houston County was 50,718 and that of the City of Dothan was 31,440, or about 61% of the total. While an exact head count is not available, it may be inferred that the population of Districts 1, 2, 3 and 4 approximates the ratio of its qualified electors to the total population of the county, less that of the City of Dothan, as compared with the ratio of qualified electors within such city to its known population.

The above-described division of the county into districts and apportionment of membership of the Board resulted from the enactment of Act No. 9 of the 1957 Regular Session of the Legislature of Alabama (Acts of Alabama, Reg. Sess. 1957, No. 9, p. 30), effective May 24, 1957. Its constitutionality when tested by the equal protection clause of the fourteenth amendment is attacked by plaintiffs.

From official records it appears that the total assessed value of property within the county for ad valorem tax purposes is $30,621,030, of which amount property within the City of Dothan accounts for $21,217,120. There being no substantial evidence of hostile treatment of the City of Dothan by the Board, the facts suggest but one arguable contention of proscribed discrimination. Sixty-one per cent of the population of the county, owning 69% of the assessed value of the property therein, are represented by only one of five Board members and therefore have only a 20% voice

in the levying of taxes and the expenditure of monies collected therefrom by the county.[1]

No. 693-E (Randolph County, Alabama)

Randolph County is divided into fourteen election precincts (Beats). Its Court of County Commissioners consists of four members, each elected by the qualified electors of the district of which he is a resident. The four districts are described as follows:

District No. 1, comprising Beats 1, 6 and 14, having a population of approximately 3,800;

District No. 2, comprising Beats 2, 3, 7 and 13, having a population of approximately 2,350;

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[1] An Alabama county has no inherent power to tax. It can impose only such tax, on such subject, under such circumstances, and within such rate as the state authorizes.

The ad valorem tax on property, available for payment of general county expenses, is prescribed by section 215 of the Alabama constitution, and the maximum rate is there set. Ala. Code, tit. 51, § 71 (1940) (Recomp. 1958) directs the board to levy this tax and for what purposes and on what property valuations. The language is mandatory and the levy is part of a detailed statutory scheme for valuation assessments, appeals therefrom, and assessment of escapes. Failure of the board to levy could be the subject of mandamus. Slaughter v. Mobile County, 73 Ala. 134 (1882).

With respect to the levying of special taxes, the power of the board is severely limited by the Alabama constitution. Thus, amendment 208 provides that no county in Alabama is authorized to levy a greater rate of taxation in any one year on the value of the taxable property therein than one-half of one per centum, except that for debt created for the erection of necessary public buildings, bridges, or roads, a county may levy and collect special taxes not to exceed one-fourth of one per centum. Amendment 202 provides for the levy of an educational tax and amendments 59 and 72 provide for the levy of hospital taxes only upon a vote of the people without regard to districts.

Ala. Code, tit. 12, § 130 (1940) (Recomp. 1958) provides that, out of the proceeds of any road tax levied by a county governing body, one-half of the money collected on property within the municipality must be paid to the municipality for use by it in maintaining its streets.

Finally, it is settled law in Alabama that the county's authority to tax is derived from the legislature and may be withheld, withdrawn, or modified (subject to intervening contractual rights). Newton v. City of Tuscaloosa, 251 Ala. 209, 36 So. 2d 487 (1948).

District No. 3, comprising Beats 4, 5 and 11, having a population of approximately 4,300;
District No. 4, in which the City of Roanoke is situated, comprising Beats 8, 9, 10 and 12, having a population of approximately 9,500.

This division of the county into districts and apportionment of membership of the court resulted from interplay of the provisions of Acts Nos. 299 and 300 of the Regular Session of the Legislature of Alabama, each effective August 10, 1965. When Act No. 299 was ratified by a county-wide referendum on November 30, 1965, Act No. 300 became operative.

From official records it appears that the total assessed value of property within the county for ad valorem taxes is $15,539,840, of which amount property situated within District No. 4 accounts for $9,984,590. The only possible constitutional argument which plaintiffs can muster is that because, after the general election in November, 1966, the residents of District No. 4, constituting 49% of the total population and owning 64% of the total assessed value of property in the county, will have only a 29% voice in the levying of taxes and the expenditure of monies collected therefrom by the county,[2] the acts producing this result are violative of the equal protection clause of the fourteenth amendment.

The prayers of plaintiffs for ultimate relief in these two cases are identical: (1) that the underlying acts of the Alabama Legislature be declared unconstitutional; (2) that it be required that the members of board and court be elected at large by the votes of all qualified electors within the county, or (3) that the elective districts by judicial fiat be reapportioned on the basis of population.

In the final analysis, plaintiffs are forced to fall back upon the argument that a purely mechanical application of the "one person, one vote" apothegm of *Gray* v. *Sanders*[3] to non-sovereign political subdivisions of a state is required by the equal protection clause of the fourteenth amendment.

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[2] See the discussion in note 1, *supra*.

[3] 372 U.S. 368 (1963).

No opinion of the Supreme Court has suggested such a basis for judicial intervention in a state's geographical distribution of electoral strength among its political subdivisions.[4] On the contrary, militating against such an openhanded approach is the reasoning of Mr. Chief Justice Warren in *Reynolds* v. *Sims*, 377 U.S. 533, 575 (1964):

> "Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 178, these governmental units are 'created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them,' and the 'number, nature and duration of the powers conferred upon [them] . . . *and the territory over which they shall be exercised rests in the absolute discretion of the State.*'" (Emphasis added.)

As we read *Baker* v. *Carr*, 369 U. S. 186 (1962), and its progeny, to justify judicial penetration of the "political thicket," there must co-exist a serious wrong, as for example the long-continued failure of a legislature through inertia, apathy, or willful refusal to reapportion itself in obedience to the mandate of the state law,[5] the whimsical

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[4] Prior to 1962, federal courts historically had refused to interfere with the arrangement of internal political subdivisions of the states. In *South* v. *Peters*, 339 U.S. 276 (1950), in a per curiam opinion, the Supreme Court stated at 277:

> "Federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions [citing cases]."

[5] Burns v. Richardson, 34 U.S.L. Week 4365 (U.S. April 25, 1966); Reynolds v. Sims, 377 U.S. 533 (1964); WMCA, Inc. v. Lomenzo, 377 U.S. 633 (1964); Maryland Comm. v. Tawes, 377 U.S. 656 (1964); Davis v. Mann, 377 U.S. 678 (1964); Roman v. Sincock, 377 U.S. 695 (1964); Lucas v. Colorado General Assembly, 377 U.S. 713 (1964).

To the foregoing authorities dealing with legislative apportionment may

relocation of the boundary lines of a local government for the obvious purpose of depriving Negroes of their right to vote,[6] or the absence of a political remedy resulting from the "stranglehold" of a minority on the legislative processes.[7]

The numerical imbalance demonstrated by simple statistics falls far short of proving invidious discrimination. The Houston County Board, as presently constituted, has been in existence for less than ten years, and the Randolph County Court, under the acts complained of, will not come into being until after the general election in November of this year. Neither has the power to reapportion itself. The Legislature of Alabama, which alone has the power to redistrict these counties, has never been advised by any definitive mandate that it has a duty to do so.

Moreover, of equal if not greater importance, in the Houston County case the plaintiffs and the urban voters they represent have a clearly available political remedy. Surely the 61% of the qualified electors of Houston County who reside within the City of Dothan have the power at the ballot box to elect representatives to the state legislature and through them, under the prevailing rule of local courtesy, obtain the desired redistricting.

It is our considered opinion that so long as the people of a state are afforded equal protection by true equality of representation in the state legislature the courts ought not to interfere with county governments of limited, as distinguished from general, power, and which have been created by the legislature as involuntary political subdivisions of the state.[8] This is especially true where such governments are not granted the power to reapportion themselves.

When the Alabama Legislature shall have been consti-

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be added *Wesberry* v. *Sanders*, 376 U.S. 1 (1964) (apportionment of congressional districts) and *Gray* v. *Sanders*, 372 U.S. 368 (1963) (county-unit system as applied in a statewide election).

[6] Gomillion v. Lightfoot, 364 U.S. 339 (1960).

[7] Cases cited in note 5, *supra*.

[8] Kendrick v. State *ex rel* Shoemaker, 256 Ala. 206, 54 So. 2d 442 (1951); Moore v. Walker County, 236 Ala. 688, 185 So. 175 (1938); Montgomery v. State, 228 Ala. 296, 153 So. 394 (1934); Askew v. Hale County, 54 Ala. 639 (1875).

tutionally reapportioned in conformity with the standards explicated in *Sims* v. *Frink*,[9] to it may safely be committed the decision as to whether all county governments should be apportioned strictly according to population or whether in some counties, including these two, there exists "a rational justification" for some other form of districting.[10]

It is not for us to forecast the likelihood that the Supreme Court will ultimately extend the principles of *Reynolds* v. *Sims*, *supra*, to the tens of thousands of subordinate political units of the states to which have been delegated some power to which the label "legislative" may be attached. Some courts have essayed to do so,[11] while others have been content to await the development of judicial standards in this comparatively uncharted area of constitutional law.[12] A warning to make haste slowly may be read into refusal by the Supreme Court on two occasions to consider cases involving the contention that the federal constitution requires local governmental bodies below the state level be apportioned on a population basis.[13]

An analysis of the powers delegated to courts of county commissioners in Alabama for the purpose of affixing the labels, "judicial," "executive," "legislative," "administrative" and "ministerial" would be a profitless exercise in semantics. In broad summary, the legislative power of such courts may be described as (1) granted by

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[9] 208 F. Supp. 431 (M.D. Ala. 1962).

[10] Baker v. Carr, 369 U.S. 186, 235 (1962).

[11] Ellis v. Mayor and City Council of Baltimore, 234 F. Supp. 945 (D.Md. 1964); Simon v. Lafayette Parish Police Jury, 226 F. Supp. 301 (W.D. La. 1964); Bianchi v. Griffing, 217 F. Supp. 166 (E.D. N.Y. 1963); Brower v. Bronkenia, Cir. Ct. for Kent County, Michigan (Sept. 11, 1964); Seaman v. Fedourich, 45 Misc. 2d 940, 258 N.Y.S. 2d 152 (Sup. Ct. 1965); Goldstein v. Rockefeller, 45 Misc. 2d 778, 257 N.Y.S. 2d 994 (Sup. Ct. 1965); State *ex rel* Sonneborn v. Sylvester, 25 Wis. 2d 177, 130 N.W. 2d 569 (1964).

[12] McMillan v. Wagner, 239 F. Supp. 32 (S.D. N.Y. 1964); Johnson v. Genesee County, Michigan, 232 F. Supp. 567 (E.D. Mich. 1964); Tedesco v. Board of Supervisors of Elections for the Parish of Orleans, 43 So. 2d 514 (La. Ct. App. 1949); Glass v. Hancock County Election Comm'n, 250 Miss. 40, 156 So. 2d 825 (1963).

[13] Glass v. Hancock County Election Comm'n, 378 U.S. 558 (1964) (per curiam); Tedesco v. Board of Supervisors of Elections for the Parish of Orleans, 339 U.S. 940 (1950) (per curiam).

the legislature; (2) quasi-legislative in the sense that it has less than the power to make fundamental law; (3) limited in scope to, and operating within, only the areas authorized by the legislature for county action; (4) exercised by a body vested with judicial power; (5) neither administrative nor executive nor judicial.[14]

It is our firm opinion that the limits imposed by the Alabama constitution on the delegation of power by the state legislature prevent such courts from having or exercising the qualitative or quantitative legislative power which is significant under *Baker* v. *Carr*. Section 44 thereof vests legislative power in the legislature and the constitutional power to make laws may not be delegated.[15]

We therefore conclude that plaintiffs have been deprived of no rights under the prevailing rationale of pertinent Supreme Court opinions, epitomized by Mr. Justice Black as follows: "No right is more precious in a free country than that of *having a voice in the election of those who make the laws under which, as good citizens, we must live.* Other rights, even the most basic, are illusory if the right to vote is undermined." (Emphasis added.)[16] Accordingly, an order will be entered dismissing each of these actions without prejudice.

Done, this the 10th day of June, 1966.

WALTER P. GEWIN,
Circuit Judge.

SEYBOURN H. LYNNE,
District Judge.

Johnson, District Judge, dissents.

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[14] By Ala. Code, tit. 12, § 5 (1940) (Recomp. 1958) the court of county commissioners is constituted a court of record. Sections 11 and 12 define its original jurisdiction and spell out many of its powers. Commingled are powers which may be characterized as judicial, executive and legislative. See State *ex rel* McIntyre v. McEachern, 231 Ala. 609, 166 So. 36 (1936); Tuscaloosa County v. Alabama Great Southern RR., 227 Ala. 428, 150 So. 328 (1933); State *ex rel* Chilton County v. Butler, 225 Ala. 191, 142 So. 531 (1932); Askew v. Hale County, *supra*, note 7. In *State ex rel McIntyre* v. *McEachern* the Supreme Court of Alabama described such court as an administrative body, as a court, and "sometimes it acts somewhat in a legislative capacity." 231 Ala. at 612, 166 So. at 38.

[15] Fox v. McDonald, 101 Ala. 51, 13 So. 416 (1893).

[16] Wesberry v. Sanders, 376 U.S. 1, 18 (1964).

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, SOUTHERN DIVISION

CIVIL ACTION No. 860

EARL C. MOODY, ET AL, *Plaintiffs*,

vs.

RICHMOND M. FLOWERS, ET AL, *Defendants*.

In conformity with the opinion of the court contemporaneously entered herewith:

It is ORDERED, ADJUDGED and DECREED by the court that this action be and the same is hereby dismissed without prejudice and that the costs of court incurred herein be and the same are hereby taxed against plaintiffs for which, unless presently paid, execution may issue.

Done, this the 10th day of June, 1966.

WALTER P. GEWIN,
Circuit Judge.

SEYBOURN H. LYNNE,
District Judge.

Johnson, District Judge, dissents.

APPENDIX B

CIVIL ACTION No. 860-S

EARL C. MOODY, ET AL.,

v.

RICHMOND M. FLOWERS, ET AL.,

CIVIL ACTION No. 693-E

JOHN B. STEVENSON, ET AL.,

v.

RICHMOND M. FLOWERS, ET AL.,

JOHNSON, District Judge, Dissenting:

I respectfully dissent.

I think the conclusion is inescapable that the principles of *Reynolds* v. *Sims* [1]—that is, the principles of equality among voters within a state and the fundamental precept that representative government is one of equal representation for an equal number of people without regard to race, sex, economic status, or place of residence [2]—apply to these local organs of government. These boards of revenue perform important governmental functions, and are designed to be controlled by the voters over which they have jurisdiction. The exercise of their powers, which include the important powers to levy and collect taxes,[3] to spend for a variety of governmental and public purposes,[4] and to establish, change, discontinue and repair roads,[5] materially

[1] 377 U.S. 533 (1964).

[2] These principles had been nurtured a year earlier in *Wesberry* v. *Sanders*, 376 U.S. 1, 18 (1964): "[O]ur Constitution's plain objective [is] . . . making equal representation for equal numbers of people the fundamental goal . . . . That is the high standard . . . which the Founders set for us."

[3] See Title 12, §§ 12(3), 185, 186, 191; Title 51, § 71; Title 29, § 31, Code of Alabama.

[4] See Title 12, §§ 11, 12, 16, 17, 18, 19, 22, Code of Alabama.

[5] See Title 12, § 11, Code of Alabama.

and substantially affects the lives, property, and welfare of the citizens of Houston and Randolph Counties. Moreover, in discharging their duties, the boards are no less representative or reflective of the views of the citizens because they are smaller than the state unit. To the contrary, rather than limit the principles of *Reynolds*, as the majority opinion does, it would seem that these principles might well have their most meaningful application at the local level. Viewed another way, if, as seems evident, the thrust of the Supreme Court decisions is that it is inherent within the concept of "equal protection" that a person has a substantial right to be heard and to participate, through his elected representatives, in the business of government on an equal basis with all other individuals, no reason or justification exists for differentiating so far as that right is concerned, between governmental business carried on at the state level and that conducted on the local level.

The two cases primarily relied on by the majority are *Glass* v. *Hancock County Election Commission*, 156 So. 2d 825 (Miss. 1963), and *Tedesco* v. *Board of Supervisors of Elections*, 43 So. 2d 514 (C.A. La. 1949). In *Glass*, the Supreme Court of Mississippi had affirmed the denial of injunctive relief on the theory that there was an adequate remedy at law, namely, available statutory procedures for redistricting. Accordingly, I do not find dismissal of the appeal by the Supreme Court, 378 U.S. 558 (1964), either controlling or indicative of the course this Court should follow. In *Tedesco*, the Louisiana appellate court concluded that the statute therein involved was not violative of any provision of the Constitution, although there was clear disparity of population, and affirmed the judgment dismissing the suit. Plaintiff's appeal to the Supreme Court was "dismissed for want of a substantial federal question." 339 U.S. 940 (1950).

Reliance on *Tedesco*, in the cases now before this Court, is misplaced. First, I find it very difficult to accept the proposition that *Tedesco*, decided in 1950, can be taken to indicate a judicial attitude on the part of the Supreme Court "to make haste slowly" in the application of a doc-

trine formulated in 1964. Second, I think it is important to emphasize that *Tedesco* did not hold that the Equal Protection Clause did not extend to the rights of voters in municipal elections or that no relief for the deprivation of the constitutional right of equal representation was available in the federal courts. *Tedesco* merely held that under the doctrine then prevailing the question of reapportionment was not justiciable. On this point, *Tedesco* was revoked by the Court in *Baker* v. *Carr*, 369 U. S. 186 (1962):

> [T]he refusal to award relief in *Colegrove* . . . resulted only from the controlling view of a want of equity. *Nor is anything contrary to be found in those per curiams that came after Colegrove.* (Emphasis added.) 369 U.S. at 234.

Justice Clark, concurring in *Baker*, said this of *Tedesco*:

> Similarly, the Equal Protection Clause was not invoked in *Tedesco* v. *Board of Supervisors* . . . . 369 U.S. at 252, n. 2.

And Justice Douglas, also concurring in *Baker*, said:

> With the exceptions of *Colegrove* v. *Green* . . . and the decisions they spawned, the Court has never thought that protection of voting rights was beyond judicial cognizance. *Today's treatment of those cases removes the only impediment to judicial cognizance of the claims stated in the present complaint.* 369 U.S. at 249-50. (Emphasis added.)

Thus, if anything, the rejection of *Tedesco* by *Baker* indicates the question is appropriate for judicial consideration.

Moreover, as a general proposition, I do not find anything sufficiently extraordinary about these cases which would justify a court's refusing to grant relief on the basis that "It is not for us to forecast the likelihood that the Supreme Court will ultimately extend the principles of *Reynolds* v. *Sims* to the . . . subordinate political units of the states . . . ."

Thus, just as this Court did not hesitate to consider the propriety of applying the newly developed principles of *Brown* v. *Board of Education*, 347 U.S. 483 (1954), to the area of public transportation in *Browder* v. *Gayle*, 142 F. Supp. 707 (M.D. Ala.), aff'd per curiam, 352 U.S. 903 (1956)—even though *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), had not been expressly overruled—or, in recognizing new developments in the area of due process of law, to consider, without the Supreme Court's first having done so, whether women should be allowed to serve on juries, *White* v. *Crook*, 251 F. Supp. 401 (M.D. Ala. 1966), we should not in the present cases cling to the doctrine of an older jurisprudence (*Tedesco*), or, in the cloak of judicial restraint and forbearance, decline to exercise jurisdiction in cases where the right to judicial relief is clear.

Nor do I find the argument that so long as the people of a state are afforded equal protection by true equality of representation in the state legislature the courts ought not to interfere with county governments "which have been created by the legislature as involuntary political subdivisions of the state." It cannot seriously be contended that the proscriptions of the Fourteenth Amendment do not extend to local governments, or that the states may conduct their affairs with absolute discretion through their local agencies or appendages without recognizing and complying with basic constitutional principles. In *Cooper* v. *Aaron*, 358 U.S. 1 (1958), the Court stated:

> [T]he prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action . . . or whatever the guise in which it was taken . . . . 358 U.S. at 17.

In this connection, see also *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960), where the Court stated:

> Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution. . . .

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> The opposite conclusion . . . would sanction the achievement by a State of any impairment of voting rights whatever so long as it was cloaked in the garb of the realignment of political subdivisions. 'It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.' 364 U.S. at 344-45.

It was on the basis of these authorities and this reasoning that the Supreme Court of Wisconsin concluded in the case of *State ex rel. Sonneborn* v. *Sylvester*, 26 Wis. 2d 43, 132 N.W. 2d 249 (1964):

> Characterizing counties as "political subdivisions created to perform functions of the state locally and existing as a result of the superimposed will of the state" or as "pure auxiliaries of the state" or as "an arm of the state" or "local organizations" which rank low down on the scale or grade of corporate existence," or "quasi municipal corporations" . . . is not determinative of whether the Fourteenth Amendment applies to their composition when the members of a county board are determined by the elective process.
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> County boards . . . must be considered a unit of government which should be equally representative of the people of the county. 26 Wis. 2d at 55-56.

It was also in recognition of these clear principles that Justice Fuld, speaking for the highest court in the State of New York, in *Seaman* v. *Fedourich*, 16 N.Y. 2d 94, 262 N.Y.S. 2d 444 (1965), stated:

> It is axiomatic that local governmental units are creations of, and exercise only those powers delegated to them by the state . . . and certainly if the latter may exercise its legislative powers only in a body constituted on a population basis, any general elective municipal organ to which it delegates certain of its powers

must, by a parity of reasoning, be subjected to the same constitutional requirement. 262 N.Y.S. 2d at 449.

One of the primary bases for my being unable to agree with the majority lies in the logic of this position. The judicial support for such position is impressive.[6]

Finally, the majority opinion indicates that "The Legislature of Alabama, which alone has the power to redistrict these counties, has never been advised . . . to do so." It is, of course, true that the policy of courts in the area of reapportionment has been to accord petitioners a full opportunity to avail themselves of whatever political remedy they might have.[7] In invoking such a judicial policy, however, the

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[6] See *Delozier* v. *Tyrone School Board*, 247 F. Supp. 30 (W.D. Pa. 1965) (local school board); *Bianchi* v. *Griffing*, 238 F. Supp. 997 (E.D. N.Y. 1965) (county board of supervisors); *Damon* v. *Lauderdale County Election Commissioners*, Nat'l. Municipal League, Court decisions on Legislative Reapportionment, Vol. 13, p. 139 (Civil Action No. 1197-E, U.S. Dist. Court, S.D. Miss., Oct. 21, 1964); *Ellis* v. *Mayor and City Council of Baltimore*, 234 F. Supp. 945 (D.Md. 1964) (city council); *Hanlon* v. *Towey*, 34 LW 2654 (Supreme Court of Minn. May 20, 1966) (county commissioners); *Angostini* v. *Lasky*, 46 Misc. 2d 1058, 262 N.Y.S. 2d 594 (1965) (county board of supervisors); *Seaman* v. *Fedourich*, 16 N.Y. 2d 94, 262 N.Y.S. 2d 444 (1965) (city council); *Mauk* v. *Hoffman*, 209 A. 2d 150 (1965) (county board of freeholders); *Matter of Goldstein* v. *Rockefeller*, 45 Misc. 2d 778, 257 N.Y.S. 2d 994 (1964) (county board of supervisors); *State ex rel. Sonneborn* v. *Sylvester*, 26 Wis. 2d 43, 132 N.W. 2d 249 (1964); *Brouwer* v. *Bronkema*, Case No. 1855, Cir. Court Kent County, Mich. 1964, (board of supervisors). See also *Lynch* v. *Torquato*, 343 F. 2d 370, 371-72 (3rd Cir. 1965).

[7] See the procedure followed by this Court in *Sims* v. *Frink*, 208 F. Supp. 431 (1962), and *Sims* v. *Baggett*, 247 F. Supp. 96 (1965), where in recognition of the judicial policy of affording citizens, through their legislature, a reasonable opportunity to secure their political remedies, this Court, after recognizing the controlling constitutional principles, at first afforded the Alabama Legislature an opportunity to reapportion, and then, upon its failure to do so, acted only moderately and provisionally with the expressed hope that the Legislature would then provide for true reapportionment. The Supreme Court of the United States, in *Reynolds* v. *Sims*, *supra*, at page 586, expressly approved such a procedure when it stated: "We feel that the District Court in this case acted in a most proper and commendable manner. . . . And it correctly recognized that legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so."

proper procedure is not to dismiss the petitions, but to retain jurisdiction and stay the proceedings to allow the State a reasonable time to adopt a valid scheme of reapportionment. I would concur in such a disposition of the cases. For the several reasons stated, I cannot concur in the dismissal of these cases.

Done, this the 14th day of June, 1966.

FRANK M. JOHNSON, JR.,
United States District Judge.

APPENDIX C

Act No. 9 of the 1957 Regular Session of the Legislature of Alabama (Acts of Alabama, Reg. Sess. 1957, No. 9, p. 30) (effective May 24, 1957):

Act No. 9 S. 93—Flowers

AN ACT

To create and establish a Board of Revenue and Control for Houston County, Alabama, to be composed of five district Commissioners and the Judge of Probate who shall serve as ex officio chairman, in place of the board of revenue now existing in said County, and abolishing said board of revenue of Houston County; to provide for the four members now serving as commissioners on the board of revenue to hold office on the Board of Revenue and Control until their terms shall expire and their successors elected and qualified; to provide for compensation of the members and the manner of payments; to divide the County into five districts by adding the fifth district and prescribing the method by which this additional commissioner shall be appointed; to provide for the election of the district commissioners prescribing their required qualifications, terms of office, duties and compensation, and the numbered precincts in each district so created and established; to provide for selection of one of the commissioners to serve as vice-chairman of the board; to prescribe a quorum for the purpose of transacting business of the county; providing for appointments to fill vacancies on the board; prescribing bonds for all commissioners and the Judge of Probate as ex officio Chairman of the board; to provide for the appointment of county engineer and defining his duties, power and authority and prescribing a maximum salary for the position; to provide for powers and authority of board members and to prescribe regular meeting dates of the board; to provide procedure for the making of contracts for construction, and/or the purchase of road and bridge material, teams, tools, machinery, supplies or equipment; to provide for repeal of all laws in conflict with this act, and especially repealing certain acts designated.

Be It Enacted by the Legislature of Alabama:

Section 1. There is hereby created and established a Board of Revenue and Control for Houston County, Alabama, effective on and after the passage and approval of this bill or act and it becomes a law. The Board of Revenue and Control shall be composed of the Judge of Probate who shall serve as ex officio Chairman, but who shall have no power or authority to vote upon any questions or business before the Board in regular, special or called sessions thereof, until there shall first be a tie vote registered among the District Commissioners present and voting, and five (5) District Commissioners, four (4) of whom are presently serving as Commissioners of Districts one (1) to four (4), respectively, of the Board of Revenue, and who shall hold office and represent the respective districts assigned to them by provisions of Section 2 of this act, as District Commissioners of the Board of Revenue and Control until their successors are elected and qualified. Each of said members of the Board of Revenue and Control shall receive as compensation the sum of $1,200.00 annually, except the Judge of Probate who as ex officio Chairman shall not receive additional compensation, and shall be paid in equal monthly installments out of the general funds of the County on warrants drawn by the Judge of Probate.

Section 2. That Houston County, Alabama, is hereby divided into five (5) Board of Revenue and Control Districts, as follows: District Number 1 shall embrace and be composed of Beats Number 1, 2, and 4 and shall be represented by the incumbent Commissioner, H. A. Hollis; District Number 2 shall embrace and be composed of Beats Number 5, 6, 7, and 11 and shall be represented by the incumbent Commissioner, F. C. Jackson; District Number 3 shall embrace and be composed of Beats Number 10, 12, and 14 and shall be represented by the incumbent Commissioner, W. Harvey Hicks; District Number 4 shall embrace and be composed of Beats Number 8, 9, and 13 and shall be represented by the incumbent Commissioner, G. D. Raley; and District Number 5 shall embrace and be composed of Beat Number 3. The Governor is authorized and empowered to appoint a member of the Board of Revenue and Control, as

hereby created, effective upon the bill or act becoming a law, to serve as District Commissioner of District Number 5, and who shall serve until his successor is elected at the General Election to be held on the first Tuesday after the first Monday in November, 1958, and becomes qualified, and who shall receive as compensation the sum of $1,200.00 per annum payable in the same manner and from the same funds of the County with which the other Commissioners are paid. One member of said Board of Revenue and Control hereby created shall hereafter be nominated and elected by the voters of each of the above-numbered districts, and he shall have been a resident of and a qualified elector in the District for a period of two years time immediately preceding the General Election to be held on the first Tuesday after the first Monday in November, 1958, and shall continue to reside therein during his continuance in office; and the members elected shall assume the duties of their office on the first Monday after the second Tuesday in January, 1959, following their election, and shall hold office for a period of four (4) years and until their successors are elected and qualified. Candidates for membership on the Board of Revenue and Control for Houston County, Alabama, shall be nominated by the voters of his respective district in the Primary next preceding the General Election at which time they shall be elected by the voters of his respective district.

Section 3. That the five (5) District Commissioners hereinabove provided for shall, immediately upon assuming office as Commissioners of the Board of Revenue and Control of Houston County, Alabama, elect one from its membership as Vice-Chairman of the Board to act, in the absence of the Judge of Probate as ex officio Chairman, as presiding officer of the said Board of Revenue and Control and who shall, while acting in the official capacity of Vice-Chairman of said Board, have and exercise all of the powers and authority vested by law in the Judge of Probate as ex officio Chairman of the said Board; and the District Commissioner so elected Vice-Chairman shall serve as such until the end of his term of office and shall not receive additional compensation for this additional duty. The presence of three District Commissioners, or of two District Commissioners

and the District Commissioner elected to serve as Vice-Chairman of the Board shall constitute a quorum for the transaction of official business at all regular, special or called meetings held.

Section 4: That in case of a vacancy on the Board of Revenue and Control, such vacancy shall be filled by appointment made by the Governor of Alabama, and the person appointed shall hold office for the remainder of the term and until his successor has qualified.

Section 5. That each District Commissioner of the Board of Revenue and Control shall, before entering upon his official duties, be required to furnish a bond, payable to the State of Alabama in the sum of $5,000.00 for the faithful performance of his duties; and the Judge of Probate, as ex officio Chairman of said Board shall likewise furnish a bond in the same sum, and all such bonds shall be approved by the Judge of the Circuit Court of the Twentieth Judicial Circuit of Alabama.

Section 6. That the Board of Revenue and Control shall appoint a County Engineer who shall be qualified to practice engineering and land surveying in the State of Alabama, and whose salary shall be fixed by the Board at an amount not to exceed $7,500.00 per annum payable in monthly installments; and who shall serve at the pleasure of the Board; and provided further that the County Engineer, with the approval of the Board of Revenue and Control, shall employ and fix the compensation of attorneys, all agents, assistants, supervisors, clerical workers, overseers, workmen, and laborers required for the construction, maintenance and repairs of all buildings, roads and bridges within the County, and shall, with the counsel, assistance and approval of said Board, purchase all necessary road machinery, material, teams, tools, supplies, and equipment as hereinafter provided in Section 8 used in and about the work on the County buildings, roads and bridges.

Section 7. That there is hereby conferred upon said Board of Revenue and Control of Houston County, Alabama, and the members thereof, all of the general authority power and duties now provided, or which may hereafter be provided to Boards of Revenue or Commissioners Courts,

under the general laws of the State of Alabama, and amendments thereto not inconsistent with the provisions of this Act, and for the acts of said Board equal, several and joint liability are hereby fixed for the members thereof. And in addition to the above duties and powers set out, the members of the Board of Revenue and Control shall in addition to the regular monthly meeting of the Board to be held on the second Monday of each month, they shall be required and it will be their additional duty to hold a meeting of the Board of Revenue and Control on the fourth Monday in each month, and the District Commissioners shall be responsible at all times for making proper inspections of roads and bridges, and other County property lying within his respective district.

Section 8. That no purchase or contract to purchase any road or bridge material, teams, tools, machinery, supplies or equipment shall be made, or any contract for the construction, maintenance or repair or any road let, either by the Board of Revenue and Control or the County Engineer, if the amount involved or the value thereof exceed $25.00 except to the lowest bidder, and where the amount of purchase or contract to be let, is in excess of $25.00 and not greater than $200.00 the Board of Revenue and Control shall have a notice posted on the bulletin board in front of the Courthouse of Houston County, Alabama five (5) days prior to the meeting at which said purchase is to be made, and if the amount of purchase to be made or contract to be let be in excess of $200.00 notice must be given that bids will be received for such purchase or contract by advertising same for a period of twenty (20) days, by publication for once a week for two (2) consecutive weeks in a newspaper published in Houston County, Alabama. And, in addition to the above notice or notices, if amount be in excess of $200.00 the Chairman of said Board of Revenue and Control shall give written notice by registered mail with return receipt requested of such contemplated purchase or purchases to at least three (3) merchants or dealers in the goods or materials to be purchased, and where notice of any contract to let, to at least three (3) contractors engaged in the type of work contemplated. Such notice or

notices, together with return receipts, must be recorded in and become a part of the minutes of the Board of Revenue and Control of Houston County, Alabama. Provided, however, in case of emergency, for the purchase of machinery parts, no advertisement shall be required as above stipulated. Any and all contracts made and entered into or purchases made by the Board of Revenue and Control, except for purchases of emergency parts, in violation of terms of this section shall be null and void, and it shall be unlawful for the Probate Judge to issue warrants in payment of same. The Probate Judge must forthwith issue all warrants in payment of all lawful contracts as herein provided.

Section 9. That the compensation for the District Commissioners elected in a manner as hereinabove provided for in the General Election to be held on the first Tuesday after the first Monday in November, 1958, and who will assume the duties of their office on the first Monday after the second Tuesday in January, 1959, shall be $1,800.00 each per annum payable in equal monthly installments out of the general funds of the County on warrants drawn by the Judge of Probate. Provided, however, that the Judge of Probate, as ex officio Chairman of the Board of Revenue and Control shall not receive any additional compensation for his duties in this capacity.

Section 10. That all laws, both general, special or local, and parts of laws in conflict with the provisions of this Act are hereby expressly repealed, and especially repealing House Local Bill No. 378, approved July 23, 1931, by the Governor of Alabama, and House Local Bill No. 533, approved June 27, 1935, by the Governor of Alabama, and House Local Bill No. 1013, approved September 13, 1935, by the Governor of Alabama, and House Local Bill No. 1014, approved September 13, 1935, by the Governor of Alabama, and Senate Local Bill No. 294 set out on pages 133, 134, 135, and 136 in Local Acts of Alabama in the year 1939, and which became a law under Section 125 of the Constitution, and House Local Bill No. 599, pages 931, 932, 933 and 934, General and Local Acts of Alabama

1949, approved September 19, 1949 by the Governor of Alabama.

Section 11. That if any section, provision, clause or portion of this Act shall be declared, by court of competent jurisdiction, to be invalid or unconstitutional, same shall not be held to effect any other section, provision, clause or portion of this Act, but same shall remain in full force and effect.

Section 12. That this Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved May 24, 1957.

Time 11:12 A. M.

APPENDIX D

42 U.S.C. § 1983:

"*Civil action for deprivation of rights.* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

42 U.S.C. § 1988:

"*Proceeding in vindication of civil rights.* The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty."

28 U.S.C. § 1343:

"*Civil rights and elective franchise.* The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(3) To redress the deprivation, under color of any

State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States. . . ."

APPENDIX E

UNITED STATES CONSTITUTION, Amendment XIV, § 1:

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX F

Article I, Section 2, of the Constitution of Alabama of 1901

> "That all political power is inherent in the people and all free governments are founded on their authority, and instituted for their benefit; and that, therefore, they have at all times an inalienable and indefeasible right to change their form of government in such manner as they may deem expedient."

Article VIII, Section 177, of the Constitution of Alabama of 1901:

> "Every male citizen of this state who is a citizen of the United States, and every male resident of foreign birth, who, before the ratification of this constitution, shall have legally declared his intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in this article, and possessing the qualifications required by it, shall be an elector, and shall be entitled to vote at any election by the people; provided, that all foreigners who have legally declared their intention to become citizens of the United States, shall, if they fail to become citizens thereof at the time they are entitled to become such, cease to have the right to vote until they become such citizens."

Article I, Section 33, of the Constitution of Alabama of 1901:

> "The privilege of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult, or other improper conduct."

Code of Ala., Tit. 17, Section 12 (1940) (Recomp. 1958):

> "Qualification of elector to vote. Every citizen of this state who is a citizen of the United States and every resident of foreign birth, who, before the ratification

of the present Constitution of the state, shall have legally declared his or her intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in Section 15 of this title, and who shall have resided in this state at least one year, in the county six months, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and who shall have been duly registered as an elector, and shall have paid, on or before the first day of February next preceding the date of the election at which he or she offers to vote, all poll taxes due from them for the next two preceding years, shall be an elector, and shall be entitled to vote at any election by the people."

(9490-4)